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Fac. Welfare Cmte.

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Adopted 04/11/03

#### **POLICY ON SERIOUS ILLNESS AND DISABILITY LEAVE FOR FACULTY**

Each constituent institution must establish a written policy to provide a period of leave for faculty in cases of extraordinary illness, major disability, or for parental purposes. Nine-month faculty at UNC institutions do not accrue sick leave. However, institutions should anticipate situations in which faculty members, because of serious illness, disability, or family responsibilities, will be unable to perform their duties for an extended period. In addition, under the federal Family and Medical Leave Act (FMLA, 1993), employees are eligible to take paid or unpaid leave up to a total of 12 weeks per year. The North Carolina Family Illness Leave Act (2002) allows for up to 52 weeks of leave without pay during a five-year period in cases of serious illness of a child, spouse, or parent. UNC constituent institutions need written leave policies for faculty that can be coordinated with these policies and with the North Carolina Disability Income Plan.

Serious illness and disability leave policies required by this policy will apply to faculty members who do not accrue sick leave and are eligible to participate in the N.C. Teachers' and State Employees' Retirement System or the UNC Optional Retirement Program [i.e., continuing faculty who are employed at least 75% of full-time].

The President may issue Guidelines for the specific features of these policies, based on the recommendations of the Task Force on Serious Illness and Disability Policies for Faculty (March 2003). Campus policies must be made available as information to current and prospective faculty members.

Adopted 05/22/03

### Guidelines on Serious Illness and Disability Leave for Faculty

At its meeting on April 11, 2003, the Board of Governors adopted a "Policy on Serious Illness and Disability Leave for Faculty." The Board's policy mandates that each constituent institution develop a written policy to provide a period of leave for faculty in cases of extraordinary illness, major disability, or for parental purposes. This policy applies to faculty who do not accrue sick leave and are eligible to participate in the N. C. Teachers' and State Employees' Retirement System or the UNC Optional Retirement Program [ i.e., continuing faculty who are employed at least 75% of full-time]. Campuses must make their policies available as information to current and prospective faculty members.

Guidelines for assisting campuses in formulating their policies are drawn from the recommendations of the Task Force on Serious Illness and Disability Leave for Faculty, which submitted its final report to the President in March 2003. The following guidelines state which features should be included in campus policies and, in some cases, the minimum benefits and eligibility that should be extended. They also include additional benefits or standards of eligibility which campuses may consider, as well as appropriate sample text drawn from existing campus policies. Those campuses that already have such policies may need to modify them to comply with the minimum benefits and eligibility. However, these campuses do not need to revise any features of their policies that exceed the guidelines below.

1. Campus policies should be approved by the appropriate campus bodies and should be effective no later than Fall Semester, 2004.
2. The policy must state that faculty members eligible for leave are those who do not accrue sick leave and are eligible to participate in the N.C. Teachers' and State Employees' Retirement System or the UNC Optional Retirement Program [ i.e., continuing faculty who are employed at least 75% of full-time]. Eligibility may be limited to those faculty eligible under the provisions of the Family and Medical Leave Act (FMLA) [i.e., who have been employed at least one year and have worked at least 1,040 hours within the last 12 months].
3. The policy should provide for a period of *paid* leave for qualifying faculty members.
4. The policy should define the duration of leave, to include a minimum of 60 calendar days of *paid* leave within a single academic semester, up to a maximum of one academic semester. Campus policies may provide for an extension of up to an additional semester (*paid or unpaid*) if the illness or disability requires a longer leave.

(Note: Employees are eligible for short-term disability benefits under the N.C. Disability Income Plan if they have at least one year of contributing membership service in the N.C. Teachers' and State Employees' Retirement System or the UNC Optional Retirement Program earned within the 36 calendar months preceding the disability. Benefits become payable following a 60-day waiting period from the date of disability onset. In lieu of short-term disability benefits, employees may elect to exhaust any accumulated sick leave, vacation leave, or any other salary continuation as provided by the University. In addition to their eligibility for the N. C. Disability Income Plan, faculty should consider

enrolling in one of the supplemental disability income plans available to UNC employees.)

5. The policy should define eligible conditions to which the policy applies. These conditions should be consistent with qualifying conditions under FMLA:
  - the birth of a child and to care for the newborn child after birth;  
(Note: An expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work or requires a reduced work schedule.)
  - placement of or to care for a child placed with the employee for adoption or foster care;  
(Note: FMLA leave may be granted before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed.)
  - serious health condition of employee's child, spouse, or parent, that requires the employee's care;  
(Note: Campuses may elect to extend this leave to include illnesses of other household members.)
  - serious health condition of the employee that prevents the employee from performing the essential functions of his or her job.
  
6. The policy should be explicitly linked to the provisions of the Family and Medical Leave Act and the N. C. Family Illness Act as stated in federal and state statutes and campus policies and address coordination with other benefits.

Sample text:

Paid Leave provided for under this policy has no effect on the faculty member's other employment benefits.

All periods of paid leave under this policy will be construed as family and medical leave under the FMLA. The FMLA entitlement of 12 weeks of leave without pay will run concurrently with any period of paid time off.

The North Carolina Family Illness Act allows for an extension of up to 52 weeks of leave without pay during a five-year period in cases of serious illness of a child, spouse, or parent.

7. The policy should include a description of the procedures for application and approval for leave.

Sample text:

Faculty members should request leave in writing to the department chair [or department or division head or dean, as appropriate]. Requests for leave should be submitted at least 60 days in advance of the leave or as soon as practicable after the need for leave is foreseeable.

The department chair will make a recommendation to the dean [or vice chancellor for academic affairs/provost, as appropriate] concerning whether or not to grant the request for leave.

The dean [or vice chancellor for academic affairs/provost, as appropriate] is responsible for deciding whether or not to approve the request for leave and provides written notification to the department chair and the faculty member. If leave is denied, the written notification should include the grounds for denial.

The policy should define an expedited appeals process if the request for leave is denied.

8. The policy should define the medical certification or other documentation that must accompany requests for leave, consistent with FMLA.

Sample text:

The University may request medical verification of the faculty member's illness or disability, including a physician's statement about the probable length of absence from normal duties. If the request is for the purpose of caring for a family member or dependent, the University may also request medical verification of that person's illness or disability and may also inquire about the circumstances which make it impossible or difficult for the faculty member to carry on with normal duties.

9. The policy should define who is responsible for ensuring coverage of the faculty member's duties and how any costs will be covered. The faculty member should not be responsible for arranging for such coverage. Campuses should be mindful of the burdens that are sometimes placed on departmental faculty members when a colleague takes an extended leave. Whenever possible, campuses should arrange to hire replacement instructors to take on the responsibilities of a faculty member on leave for an extended period.

Sample text:

The department chair is responsible for securing, to the extent possible, substitute personnel for the duration of the faculty member's leave. Any adjustments in work schedules within the department are at the discretion of the department chair with the approval of the dean and are subject to departmental and institutional needs and resources.

The cost of substitute personnel is the department's responsibility. In recommending approval of a leave to the provost, the department chair or dean will certify that he or she is prepared to develop a plan to cover the responsibilities of the faculty member for the duration of the leave.

10. The policy should state that *unused* leave under this policy shall *not* be
- accumulated or carried over to another academic year,
  - allowable as terminal leave payment when the faculty member leaves the University, or
  - used to extend years of creditable state service for retirement benefit purposes.

Employees with a balance of accrued leave from a previous 12-month appointment should be asked to exhaust that leave before receiving sick leave under this policy.

11. The policy should state who is responsible for maintaining leave records (important for documentation under FMLA).
12. The policy should state links to "tenure clock" policies, to faculty evaluation processes such as post-tenure review, and to discrimination and confidentiality policies.

Sample text:

At the time a request for leave is granted, the faculty member, department chair, dean, and provost will agree in writing whether time spent on leave will count as probationary service. In the absence of an agreement or if the parties fail to reach agreement, time spent on leave shall count as probationary service.

A faculty member granted leave under this policy may have his or her five-year post-tenure review delayed by a period agreed upon by the faculty member, department chair, and dean.

Faculty will not be penalized in their condition of employment because they require time away from work caused by or contributed to by conditions such as pregnancy, miscarriage, childbirth, or recovery. Requests for leave because of these conditions shall be treated the same as a temporary disability.

## D R A F T - II

11/10/2003

### Policy on Serious Illness and Disability Leave for Faculty East Carolina University

#### Introduction and Purpose

The purpose of this policy is to provide for *paid* leave for faculty for cases of a serious health condition, maternity leave, or parental leave as defined under the Family and Medical Leave Act (FMLA). The purpose of this policy is also to coordinate leaves granted under other federal and state Acts such as the FMLA, the North Carolina Family Illness Act, and the UNC Policy on Serious Illness and Disability Leave for Faculty. This policy does not apply to brief absences which can usually be accommodated informally.

Leave offered under this policy is *not* allowable as terminal leave payment when the faculty member leaves the employment of the University. ***Unused leave shall not accumulate nor be carried forward from one academic year or calendar year to the next.*** It may not be used to extend years of creditable state service for retirement benefits. However, it may be exhausted prior to participation in the Disability Income Plan of North Carolina that is provided to state employees.

If the illness or disability requires an absence from faculty duties in excess of the sixty calendar days, the faculty member may petition for a leave of absence without pay under procedures described in the *Faculty Manual* and in University policies implementing the Family and Medical Leave Act or under statutory regulations for family illness leave. The faculty member may also apply to Human Resources for salary continuation through the Disability Income Plan or through another salary continuation plan that may be offered to University employees on an optional basis.

Granting or denial of a request for a leave under this policy shall be made without regard to the faculty member's race, color, national origin, religion, gender, age, sexual orientation, political affiliation, disability, or personal malice.

#### I. Definitions

For purposes of this policy a brief absence is defined as ten (10) working days or less.

A serious health condition is defined as (a) an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential medical care facility, or that involves continuing treatment by a health care provider; (b) any period of incapacity requiring absence from work of more than ten calendar workdays that also involves continuing treatment by a health care provider;

or (c) continuing treatment by a health care provider for conditions so serious that, if not treated would likely result in an absence of more than ten workdays. Prenatal care is also included. The period of actual physical disability associated with childbirth is considered a serious health condition and must be taken as family/medical leave, whether as paid or unpaid leave.

Parent - a biological or adoptive parent or an individual who stood *in loco parentis* (a person who is in the position or place of a parent) to an employee when the employee was a child.

Child - a son or daughter who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability. Child would include: (a) biological, (b) adopted, (c) foster, (d) step-child, (e) legal ward, and (f) child of an employee standing *in loco parentis* as defined above.

Start Date - The period of paid leave under this policy begins with the first day of the absence resulting from such illness or disability.

## **II. Eligibility**

This policy applies to persons holding regular full-time faculty appointments who are eligible for participation in either the North Carolina Teachers and State Employees Retirement System or the Optional Retirement Program, and who are not eligible to earn sick leave under any other state or institutional leave policy. Consistent with FMLA, a faculty member must have been employed at least one year and have worked at least 1,040 hours within the last 12 months to be eligible to apply for leave under this policy. If a faculty member has been in a previous leave-earning position and has an accumulated sick leave balance, the faculty member must exhaust any previous sick leave balance prior to requesting coverage under this policy.

## **III. Benefit**

A faculty member who has a medically verifiable illness or disability as defined under FMLA, or whose immediate family member has a medically verifiable illness, may request a paid leave of absence for up to sixty (60) calendar days. In the discretion of the University, a faculty member may be granted leave with pay up to a maximum of one academic semester (approximately 15 weeks) during a 12 month period (determined by counting back 12 months from the date the leave begins), but such grants shall be approved only in exceptional circumstances and must have the concurrence of the vice chancellor and the Associate Vice Chancellor for Human Resources. The period of paid leave under this policy begins with the first day of absence resulting from such illness or disability.

More than one disability leave may be granted in a 12-month period, so long as the second illness or disability for which leave is sought is unrelated to the first, but the total maximum allowable paid leave for such illnesses may not exceed one academic semester (approximately 15 weeks) in length.

Leave taken under this policy shall run concurrent with FMLA leave and/or with the statutory provisions of the North Carolina Family Illness Act. The unit administrator/dean\* may require such medical documentation/certifications, second or third medical opinions (at its expense) or other documentation of the need for leave, probably length of absence from normal duties, ability to return to work, or intent to return to work as it may deem necessary. ***[\*With respect to personnel matters, academic units are defined as departments as described in the codes of operation in the six colleges, professional schools without departments, academic library services, health sciences library, and any other units in which faculty appointments are made. In the college and professional schools whose unit codes describe department structures, department chairs are the unit administrators. In academic areas that do not have departments described in their unit codes, the director or dean is the unit administrator.]*** The University may also require satisfactory evidence that the faculty member will exercise primary responsibility for the care of those that would qualify the faculty member for leave under this policy.

In addition, the North Carolina Family Illness Act allows for an extension of up to a total of 52 weeks of unpaid leave during a five-year period in cases of a personal illness or disability or the serious illness of a child, spouse, or parent. FMLA leave and leave used under this policy will count as part of the 52 week allowable total and will run concurrently.

#### IV. Use of Leave

The period of leave provided under this policy may be used for medically verifiable sickness or injury as defined under the FMLA. Use of such leave includes the birth of a child and to care for the newborn child after birth or for temporary disability connected with childbearing and recovery, which prevents the faculty member from performing usual duties. Leave also may be used for the placement of or to care for a child placed with the employee for adoption or foster care, for serious health condition of the employee that prevents the employee from performing the essential functions of his/her job. In accordance with ECU's policy on leave granted under the Family and Medical Leave Act, a faculty member may seek leave needed as a consequence of a medically verifiable illness/disability of a member of the immediate family (defined as spouse, parents, children - including step relationships) who reside (or must reside because of the illness) in the faculty member's home, or other legal dependents living in the faculty member's household and who require the faculty member's care.

If the request is for the purpose of caring for a faculty member's family member or dependent, the unit administrator may request medical verification of the illness or disability of that person and may also inquire about the circumstances which make it impossible or difficult for the faculty member to carry on with normal duties.

When the request is to care for the faculty member's family member or dependent, the unit administrator may base the recommendation on other factors, including the



needs of the unit, timing within the academic year, effect on students, ability of the unit to compensate for the absence, etc.

A faculty member who anticipates the need for a temporary disability leave shall notify the unit administrator in writing as soon as possible.

Female faculty shall not be penalized because they require time away from work caused by or contributed to by pregnancy, miscarriage, abortion, childbirth or recovery. Disabilities resulting from pregnancy shall be treated the same as any other temporary disability. The type and nature of the faculty member's duties during pregnancy shall be determined by the unit administrator in consultation with the faculty member and upon advice she receives from her physician.

#### **V. Administration of Benefit**

It is the responsibility of the faculty member to request the use of leave provided by this policy as soon as possible upon learning of the need for the leave. This request will normally be made in a letter to the unit administrator. The unit administrator may request medical verification of the faculty member's illness or disability, including a physician's statement about the probable length of absence from normal duties. To facilitate the gathering and review of necessary medical documentation, the unit administrator may request the assistance of the Human Resources benefits staff.

The unit administrator will make a recommendation to the dean [where the dean is not the unit administrator] concerning whether or not to grant the request for leave. The dean is responsible for making a decision on whether or not to approve leave after reviewing the unit administrator's recommendation and consulting with the Office of Human Resources. The dean will provide written notification of the decision to the unit administrator, who will then advise the faculty member. The dean will provide a copy of the notice to the appropriate vice chancellor and to the Office of Human Resources. If leave is denied, the written notification will include the grounds for denial.

If the dean approves leave under this policy, the dean is responsible for working out with the unit administrator an arrangement for covering the duties of the person on leave. **Because of the legal prohibitions against paying a person for work not performed, unless such payment is being made under a legitimate leave policy, unit administrators/deans will no longer be permitted to let other faculty members "cover" for the faculty member who must be out because of extended illness or disability.** When a unit administrator or dean is made aware of the necessity for a faculty member to be absent because of a serious illness of the faculty member or a member of the faculty member's immediate family as defined under this policy, it is the unit administrator and dean's responsibility to ensure that any leave taken in connection with such illness or disability is in accordance with the terms and conditions of this policy.

Leave may be granted for up to a period actually required by the extended illness or disability, not to exceed sixty calendar days or the end of the faculty member's contract period, whichever occurs first. If an extension is granted, the period may not exceed one academic semester (approximately 15 weeks) or the end of the faculty member's contract period, whichever occurs first.

#### **VI. Appeals**

A dean's decision not to grant a request for leave under this policy may be appealed to the appropriate vice chancellor. The vice chancellor's decision may be appealed to the chancellor. The chancellor's decision is final. Appeals of a negative decision must be made to the next higher level within ten (10) business days of receipt of the negative decision.

#### **VII. Confidentiality**

Communications concerning leave requested or granted under this policy are subject to the same confidentiality requirements as other personnel records. However, because these are deemed to be medical records, they must be kept separate and apart from regular personnel records. These medical records are generally not available except as specified under NCGS § 126-24.

#### **VIII. Record-Keeping**

Because this policy provides an important financial benefit, accurate records on its use must be maintained. Each vice chancellor will maintain the official records for their division, and may, from time to time, be required to make general reports on its use to other University administrators and to the Faculty Senate.

#### **IX. Coordination with Other Policies**

Appendix D. of the *East Carolina University Faculty Manual* indicates that "Leaves from all employment obligations which are granted to probationary-term faculty may include extension of the length of the probationary term. (Leaves of absence normally should be for not more than two academic years or occur more often than once in three years.) Extensions of the probationary term shall be granted only in cases of severe personal exigency, such as illness, childbirth, childcare, or other compelling personal circumstances, and shall be limited to a total of no more than two years. Extensions of the probationary term must be expressly stated in appointment or reappointment documents or added by a written memorandum of amendment by the unit administrator during the term of an appointment. The probationary term may be extended in increments of one or more academic years: one year for leaves of one or two semesters, two years for leaves of three or four semesters. All such extensions must be approved in writing by the faculty member, the Unit Personnel Committee, the unit administrator, the dean, the appropriate vice chancellor, and the chancellor or the chancellor's designee." In the absence of an

- agreement or if the parties fail to reach agreement, time spent on leave shall count as probationary service.

A permanently tenured faculty member granted leave under this policy may have his or her five-year cumulative review delayed by a period agreed upon by the faculty member, unit administrator, and dean.

The terms of this policy pertain only to a leave for a specified period because of illness or disability. This policy has no effect on provisions for other types of leave as described in the *Faculty Manual*.

The 60 days of paid leave provided for under this policy shall have no effect on the faculty member's other employment benefits.

#### **X. Effective Date**

This policy shall become effective immediately upon approval by the President of The University of North Carolina and shall supercede any previous authority granting leave for faculty who would not otherwise be eligible for paid leave.